REMARKS

A Request for Continued Examination ("RCE") is provided herewith. The claims have been amended herein, as may be appreciated from the above listing of claims. Authorization is provided herewith to pay any underpayment of fees or credit any overpayment of fees to Deposit Account No. 02-4800.

I.   RESPONSE TO REJECTION OF PREVIOUSLY PENDING CLAIMS

In the Final Office Action dated April 7, 2009 (hereafter "the Office Action"), the Examiner rejected all the previously presented claims as being rendered obvious or anticipated. Claims 24-30 were rejected as anticipated by U.S. Patent No. 5,568,181 to Greenwood et al. (Office Action, at 3). Claims 31-34 were rejected as rendered obvious by the combination of Greenwood et al. and U.S. Patent Application Publication No. 2003/0043846 to Purpura et al. (Office Action, at 7).

A.   Burden of Proving Anticipation Under 35 U.S.C. § 102

"In order to demonstrate anticipation, the proponent must show that the four corners of a single, prior art document describe every element of the claimed invention." *Net Moneyin, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 88 U.S.P.Q.2d 1751, 1758, 2008 WL 4614511, *8 (Fed. Cir. 2008). The prior art reference relied upon to show anticipation "must not only disclose all elements of the claim within the four corners of the document, but also disclose those elements arranged as in the claim." *Id.* "As arranged in the claim means that a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate because the reference would be missing any disclosure of the limitations of the claimed invention arranged as

in the claim." *Id.* "The test is thus more accurately understood to mean arranged or combined in the same way as in the claim." *Id.*

B. Burden Of Proving Obviousness Under 35 U.S.C. § 103

"**All words in a claim must be considered in judging the patentability of that claim against the prior art**." MPEP § 2143.03 (emphasis added). "When evaluating claims for obviousness under 35 U.S.C. 103, **all the limitations of the claims must be considered and given weight**." MPEP § 2143.03. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *Id.* "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date." MPEP § 2141.01.

To establish a *prima facie* case of obviousness, an Examiner must show that an invention would have been obvious to a person of ordinary skill in the art at the time of the invention. MPEP § 2141. "Obviousness is a question of law based on underlying factual inquiries." *Id.* The factual inquiries enunciated by the Court include "ascertaining the differences between the claimed invention and the prior art" and "resolving the level of ordinary skill in the pertinent art." MPEP § 2141.

"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP § 2143.01. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, **there must be some**

articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness." MPEP § 2143.01 (citing *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396) (emphasis

added).

Moreover, "[i]f the proposed modification or combination of the prior art would change

the principle of operation of the prior art invention being modified, then the teachings of the

references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01. Also,

"the proposed modification cannot render the prior art unsatisfactory for its intended purpose."

MPEP § 2143.01.

  C. <u>The Pending Claims Are Not Anticipated By Greenwood et al.</u>

The pending claims require a computer or a method to include

determining whether an amount of bandwidth exists that is sufficient for transmission of a

demanded software component by identifying at least one lower priority process using

bandwidth of the network that each has a lower priority than the demand in the network and

calculating an amount of available bandwidth resources that is obtainable from reducing

bandwidth resources of the network available to the at least one lower priority process. If the

computed amount of available bandwidth resources is equal to or greater than an amount of

bandwidth necessary to transmit the software component to the requesting terminal, the one or

more lower priority processes have their resources reduced or frozen and the software

component is transmitted to the requesting terminal. If the computed amount of available

bandwidth resources is less than the amount of bandwidth necessary to transmit the software

component to the requesting terminal, the transmission of the software component is inhibited or

rejected.

At page 6 of the Office Action, the Examiner cites Column 6, lines 30-38 and Figure 4 of Greenwood et al. as disclosing "allocates the bandwidth of the lower priority process to requesting process so that the requesting process has a bandwidth at least equal to the required bandwidth." However, this portion of Greenwood et al. does not teach or suggest such functionality. Indeed, Greenwood et al. does not teach or suggest the reduction or freezing of any network resources to a process of a network that has previously been assigned network resources.

Greenwood et al. disclose a video distribution management system that delivers video in response to a request if adequate bandwidth is available. However, if no adequate bandwidth is available, the video is not transmitted to the requester. (Greenwood et al, Figure 4, Col. 5, line 17 through Col. 6, line 42). Alternatively, the requested video is split into a smaller cache to meet the bandwidth resources of the network. (*Id.*). There is no teaching or suggestion of reducing or freezing the bandwidth of other processes on the network to provide an adequate amount of bandwidth resources for transmitting a software component. Indeed, Greenwood et al. teach away from this feature.

For instance, Greenwood et al. teach that a requested video should be sent in smaller cache sizes to transmit video upon receiving a request if available bandwidth is deemed to be insufficient. This is contrary and opposite to the functionality provided by the invention of the pending claims. Instead of reducing the size of a transmission or a cache for a software component, the claimed invention reduces or freezes network resources allocated to other lower priority processes and reallocates those resources to permit transmission of a demanded software component.

In fact, Greenwood et al. is silent with respect to the priority of other demanded videos. Indeed, Greenwood et al. suggest that every demand has the same priority level.

Moreover, Greenwood et al. are silent with respect to any requests having different levels of priority. For instance, Applicants cannot find the term "priority" within the text of Greenwood et al.

Greenwood et al. fail to teach or suggest each and every limitation of every pending claim. Therefore, Greenwood et al. cannot anticipate the pending claims.

D.   The Pending Claims Are Not Rendered Obvious By The Cited Combination Of Art

The pending claims require a computer or a method to include determining whether an amount of bandwidth exists that is sufficient for transmission of a demanded software component by identifying at least one lower priority process using bandwidth of the network that each has a lower priority than the demand in the network and calculating an amount of available bandwidth resources that is obtainable from reducing bandwidth resources of the network available to the at least one lower priority process. If the computed amount of available bandwidth resources is equal to or greater than an amount of bandwidth necessary to transmit the software component to the requesting terminal, the at least one lower priority process has its resources reduced or frozen and the software component is transmitted to the requesting terminal. If the computed amount of available bandwidth resources is less than the amount of bandwidth necessary to transmit the software component to the requesting terminal, the transmission of the software component is inhibited or rejected.

As discussed above, Greenwood et al. do not teach or suggest such requirements. Further, Purpura et al. also fail to teach or suggest such a requirement. Purpura et al. disclose a

communication method for access to a shared broadband signal by a number of different clients. (Purpura et al., Abstract). The broadband signal is equally distributed among all the clients. (*Id.* at ¶ 20).

In fact, as with Greenwood et al., Purpura et al. teach away from the limitations of the pending claims. Purpura et al. teach that data to be transmitted should be pared down to meet network bandwidth requirements. For instance, Purpura et al. teach that email attachments should be removed if they exceed a bandwidth limit. (Purpura et al., ¶ 21).

Indeed, Purpura et al. teach that a user is not allowed to have its access to bandwidth get increased at the expense of other users. (*Id.* at ¶ 22). Purpura et al. teach that all users have the same priority and that no consideration should be made in distributing bandwidth based on user priorities. This is contrary to the priority considerations made in determining whether bandwidth exists that permits the transmission of a requested software component as required by the pending claims.

The combination of Greenwood et al. and Purpura et al. cannot and does not teach or suggest all the limitations of the pending claims. Therefore, the pending claims are allowable over the cited combination of art.

                  1.   **The Cited Art Does Not Teach Or
                               Suggest Limitations Of Claims 46-47**

Claims 46 and 47 require an available bandwidth memory to have data on bandwidths assigned to processes using network bandwidth resources and priorities for these processes. Neither Greenwood et al. nor Purpura et al. teach or suggest memory that has a data on bandwidths assigned to processes using network bandwidth resources and priorities for these processes. In fact, both Greenwood et al. and Purpura et al. are silent with respect to the

allocation of different priorities to different processes. Therefore, the limitations of claim 46 and 47 are not taught or suggested by the combination of Greenwood et al. and Purpura et al.

2. The Cited Art Does Not Teach Or Suggest Limitations Of Claims 48-53

Claims 48-53 require a computer to include a performance characteristic providing device and a network resource distribution memory. None of the cited art contains these elements nor such elements that are configured as required by claims 48-53. For instance, none of the cited art teaches or suggests any performance characteristic providing device configured to identify at least one lower priority process using bandwidth of a network that each has a lower priority than the demand for a software component. Nor does the cited art teach or suggest a network resource allocation device configured to reduce or freeze the network resources assigned to one or more lower priority processes. Therefore, the limitations of claims 48-53 are not taught or suggested by the combination of Greenwood et al. and Purpura et al.

II. CONCLUSION

For at least the above reasons, allowance of all pending claims is respectfully requested.

Respectfully submitted,

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Dated: June 1, 2009

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